

**DEPARTMENT OF DEFENSE
DIRECTIVES SYSTEM TRANSMITTAL**

NUMBER	5500.7-R, Change 3	DATE	December 12, 1997	DISTRIBUTION	Special
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ATTACHMENTS
54 Pages

INSTRUCTIONS FOR RECIPIENTS

The following page changes to DoD 5500.7-R, "Joint Ethics Regulation," August 1993, are authorized:

PAGE CHANGES

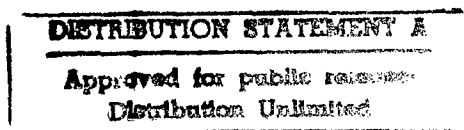
Remove: Pages 3 through 8, 15, 16, 33 through 36, 39, 40, 43, 44, 59, 60, 63, 64, 81 through 86, 93 through 96, 101, 102, 105, 106, 131, 132, 139 through 144, 179 through 180-2

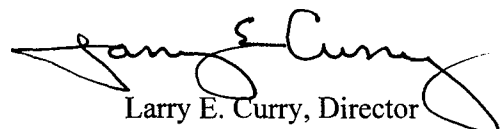
Insert: Attached replacement pages

Changes appear on pages 4, 6, 7, 15, 16, 33, 36, 39, 43, 44, 59, 64, 81, 83, 84, 86, 94, 102, 105, 131, 139, 140-1 through 144, 179, 180-1 and 180-2, and are indicated by marginal asterisks and change bars.

EFFECTIVE DATE

The above changes are effective immediately.




Larry E. Curry, Director
Correspondence and Directives

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TITLE: 5500.7-R, Chage 3, Joint Ethics Regulation, Aug 93

DoD Directive 5230.24, "Distribution Statements on Technical Documents," 18 Mar 87, contains seven distribution statements, as described briefly above. Technical Documents must be assigned distribution statements.

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Government employees) of any DoD Component (including any non-appropriated fund activity).

b. Any active duty Regular or Reserve military officer, including warrant officers.

c. Any active duty enlisted member of the Army, Navy, Air Force, or Marine Corps.

d. Any Reserve or National Guard member on active duty under orders issued pursuant to title 10, United States Code.

e. Any Reserve or National Guard member while performing official duties or functions under the authority of either title 10 or title 32, United States Code, or while engaged in any activity related to the performance of such duties or functions, including any time the member uses his Reserve or National Guard of the United States title or position, or any authority derived therefrom.

f. Any faculty member in a civil service position or hired pursuant to title 10, United States Code, and any student (including a cadet or midshipman) of an academy, college, university, or school of DoD.

g. Consistent with labor agreements and international treaties and agreements, and host country laws, any foreign national working for a DoD Component except those hired pursuant to a defense contract.

1-212. DoD Supplement. Subsections 2-200 through 2-207 of this Regulation contain the DoD Supplement of 5 C.F.R. 2635 (reference (d)), which is reproduced in subsection 2-100 of this Regulation.

1-213. Employment. See 5 C.F.R. 2635.603(a) (reference (d)) in subsection 2-100 of this Regulation.

1-214. Ethics Counselor. The DoD Component DAEO, Alternate DAEO, Deputy DAEO, or a DoD employee appointed in writing by the DoD Component DAEO or designee to generally assist in implementing and administering the DoD Component command's or organization's ethics program and to provide ethics advice to DoD employees of the DoD Component command or organization in accordance with this Regulation. Except for a DoD Component DAEO, Alternate DAEO, or Deputy DAEO, a DoD employee appointed as an Ethics Counselor shall only serve as a "DAEO or designee" when he has been delegated

specific written authority by the DoD Component DAEO to perform specific functions on behalf of the DoD Component DAEO. Except for a DoD Component DAEO, Alternate DAEO, or Deputy DAEO, a DoD employee appointed as an Ethics Counselor shall be an attorney. Legal assistance officers (or equivalent) who also serve as Ethics Counselors must clearly separate these roles. Communications received in an Ethics Counselor capacity are not protected by the attorney-client privilege while communications received in a legal assistance capacity may be. Attorneys who serve as Ethics Counselors must advise individuals being counseled as to the status of that privilege prior to any communications. The term "Ethics Counselor" includes "agency ethics official" as used by the Office of Government Ethics (OGE). See 5 C.F.R. 2635.102.(c) (reference (d)) in subsection 2-100 of this Regulation.

1-215. Ethics Oversight Committee (EOC). A working group composed of the DoD Component DAEOs, or their representatives, and representatives of the CJCS, and the Judge Advocates General of the Military Departments.

1-216. Former DoD Employee. Any individual defined in subsection 1-211 of this Regulation, above, after termination of active duty or termination of on DoD service, including Reserve military officers who served on active duty for more than 130 days and who are no longer on active duty, or who are in an inactive or retired status.

1-217. Gratuity. Gifts as defined in 5 C.F.R. 2635.203(b) (reference (d)) in subsection 2-100 of this Regulation.

* 1-218. He, His, Him, Himself. These pronouns include she, hers, her and herself. (This section will be deleted in future reissuance of this Regulation.) *

* 1-219. Head of DoD Component Command or Organization. A commander, commanding officer, or other military or civilian DoD employee who exercises command authority within a DoD Component. For the purposes of subsections 3-210.a.(6), 3-210.a.(7), * and 3-211., below, the Adjutant General of each State and territory is the "Head of a DoD * Component command or organization" regarding National Guard facilities, resources, and * personnel of that State or territory. *

1-220. Major Defense Contractor. Any non-Federal entity which, during the preceding fiscal year, received defense contracts in a total amount equal to or greater than \$10 million.

1-221. Non-Federal Entity. A non-Federal entity is generally a self-sustaining, non-Federal person or organization, established, operated and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government. A non-Federal entity may operate on DoD installations if approved by the installation commander or higher authority under applicable regulations.

1-222. Non-Public Information. Information generally not available to the public, obtained in the course of one's official DoD duties or position, which would normally

* not be releasable under the Freedom of Information Act, 5 U.S.C. 552 (reference (e)). The *
 term "non-public information" includes "inside information," "proprietary information," and
 * "source selection information." See 5 C.F.R. 2635.703 (reference (d)) in subsection 2-100 of *
 this Regulation, DoD Directive 5400.7 (reference (f)), and FAR 3.104-4(j) and (k) and 3.104-5 *
 (reference (a)) in Appendix B of this Regulation.

* 1-223. Office of Government Ethics. The Federal Government agency *
 responsible for overall direction and leadership concerning Executive Branch policies related to *
 * ethics in the Federal Government. See 5 C.F.R. 2638 (reference (g)) in subsection 11-100 of *
 this Regulation.

* 1-224. Personal and Substantial. See 5 C.F.R. 2635.402(b)(4) *
 * (reference (d)) in subsection 2-100 of this Regulation.

* 1-225. Personal Commercial Solicitation. Any effort to contact an *
 individual to conduct or transact matters involving unofficial business, finance, or commerce.
 This does not include off-duty employment of DoD employees employed in retail
 * establishments. See DoD Directive 1344.7 (reference (h)). *

* 1-226. Procurement Official. See FAR 3.104-4(h) (reference (a)) in *
 Appendix B of this Regulation.

* 1-227. Prohibited Source. See 5 C.F.R. 2635.203(d) (reference (d)) in *
 subsection 2-100 of this Regulation.

* 1-228. Qualified Individual. See 5 C.F.R. 2638.702(a)(2) (reference (g)) *
 in subsection 11-100 of this Regulation.

* 1-229. Reserve Military Officer. An individual who currently holds an *
 appointment in the Reserve of a Military Department, or is a military officer of the National
 Guard with Federal Government recognition.

* 1-230. Retired Military Officer. Any military officer entitled to receive *
 military retired pay, even though such pay may be waived or pending.

* 1-231. Senior DoD Official. For purposes of 18 U.S.C. 207 *
 * (reference (i)), a DoD employee:

(i) [E]mployed at a rate of pay specified in or fixed according to
 subchapter 11 of chapter 53 of [United States Code,] title 5

[(reference (e))];

(ii) [E]mployed in a position which is not referred to in clause a. and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5305 of [United States Code,] title 5 [(reference (e))] (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule;

(iii) [A]ppointed by the President to a position under section 105(a)(2)(B) of [United States Code,] title 3 [(reference (j))] or by the Vice President to a position under section 106(a)(1)(B) of [United States Code,] title 3 [(reference (j))]; or

(iv) [E]mployed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of [United States Code,] title 37 [(reference (k))]) is pay grade 0-7 or above.

See 18 U.S.C. 207(c)(2) (reference (i)).

1-232. Special Government Employee. An individual who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve military officer who is serving on active duty involuntarily or for training for any length of time, and one who is serving voluntarily on active duty for training for 130 days or less. It does not include enlisted members; however, for the purposes of this Regulation, enlisted members shall be considered special Government employees to the same extent that military officers are included in the meaning of the term.

* 1-233. Title 32 National Guard Member. National Guard members *
* performing military training or other duties under title 32, United States Code, reference (l). *

* 1-234. Travel Benefits. Travel related gifts, including in kind subsistence and *
accommodations and payments or reimbursements of expenses, from non-Federal sources.

SECTION 3. GENERAL POLICY

1-300. DoD Policy. It is DoD policy that:

a. A single, uniform source of standards of ethical conduct and ethics guidance shall be maintained within DoD, and each DoD Agency shall implement and administer a comprehensive ethics program to ensure compliance with such standards and

guidance;

b. Although OGE regulations, reprinted in this Regulation, do not apply to enlisted members of the Uniformed Services or "Title 32 National Guard Members," the provisions of 5 C.F.R. 2634 (reference (m)) in subsection 7-100., below, 5 C.F.R. 2635 (reference (d)) in subsection 2-100., below, 5 C.F.R. 2638 (reference (g)) in subsection 11-100., below, 5 C.F.R. 2639 (reference (n)) in subsection 5-100., below, 5 C.F.R. 2640 (reference (o)) in subsection 5-200., below, and 5 C.F.R. 2641 (reference (p)) in subsection 9-200., below, are hereby determined to be appropriate for, and are made applicable to, enlisted members of the Uniformed Services and "Title 32 National Guard Members" to the same extent that these regulations apply to officers of the Uniformed Services. The following exception applies:

(1) Certain criminal statutes, 18 U.S.C. 203, 205, 207, 208, and 209, (reference (i)), and related provisions of OGE regulations, do not apply to "Title 32 National Guard Members" or enlisted members of the Uniformed Services. Provisions similar to those of sections 208 and 209 of reference (i) apply to enlisted members of the Uniformed Services and "Title 32 National Guard Members" as follows:

(a) Except as approved by the DoD Component DAEO, or designee, a "Title 32 National Guard Member" and an enlisted member of the Uniformed Services, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner, or employee, or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest;

(b) A "Title 32 National Guard Member" and an enlisted member of the Uniformed Services, except an enlisted special Government employee, shall not receive any salary or supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government.

c. DoD employees shall become familiar with all ethics provisions, including the standards set out in E.O. 12674 (reference (q)) in subsection 12-100 of this Regulation, and comply with them;

d. DoD employees shall become familiar with the scope of and authority for the official activities for which they are responsible. Sound judgment must be exercised. All DoD employees must be prepared to account fully for the manner in which that judgment has been exercised;

e. If the propriety of a proposed action or decision is in question for any reason, DoD employees shall seek guidance from a DoD Component legal counsel, the DoD Component DAEO or designee, or Ethics Counselor, as appropriate;

f. Individual conduct, official programs and daily activities within DoD shall be accomplished lawfully and ethically;

g. DoD employees shall adhere strictly to DoD policy of equal opportunity, regardless of race, color, religion, gender, age, national origin, or handicap, in accordance with applicable laws and regulations.

SECTION 4. GENERAL RESPONSIBILITIES

1-400. The Head of each DoD Component shall:

a. Exercise personal leadership and take personal responsibility through the DoD Component DAEO or designee for establishing and maintaining the DoD Component's ethics program and be personally accountable for the DoD Component's compliance with every requirement of this Regulation, including the ethics and procurement integrity training requirements;

b. When authorized, appoint a DoD Component DAEO, through a formal written delegation of authority, who is qualified to oversee and supervise the DoD Component's ethics programs for DoD employees, both civilian and military. (The GC, DoD, may serve as the DAEO for several DoD Components);

c. When authorized, appoint a DoD Component Alternate DAEO who shall serve in the absence of the DoD Component DAEO;

d. Provide sufficient resources (including funding and investigative, audit, legal, training and administrative staff) to enable the DoD Component DAEO or designee to implement and administer the DoD Component's ethics programs in a positive and effective manner.

1-401. Each DoD Component Designated Agency Ethics Official (DAEO) shall:

a. Be responsible for the implementation and administration of all aspects of the DoD Component ethics program and manage and oversee local implementation and administration of all matters relating to ethics covered by this Regulation.

b. Appoint DoD Component Deputy DAEOs and Ethics

e. In coordination with the DoD Component DAEO or designee, establish procedures to advise incoming and outgoing DoD employees of their financial and employment disclosure reporting obligations.

1-415. The Administrative Officer (or equivalent) of each DoD Component command and organization shall:

a. Ensure that each position description of the DoD Component command or organization indicates if an SF 278, "Public Financial Disclosure Report," or SF 450, Appendix C of this Regulation, and annual ethics and procurement integrity training are required so prospective or new DoD employees are on notice of such requirements prior to employment;

b. Upon the request of the DAEO or designee, ensure the accuracy of personnel data provided by the Director of the DoD Component personnel office on DoD employees of the DoD Component command or organization;

c. In coordination with the DoD Component DAEO or designee, develop a list of all DoD employees within the DoD Component command or organization who are required to receive ethics and procurement integrity training;

d. In coordination with the DoD Component DAEO or designee, ensure that DoD employees of the DoD Component command or organization are scheduled to receive required ethics and procurement integrity training;

e. Annotate such list to indicate when required training was accomplished and retain annotated list for three years.

1-416. Each DoD Employee shall:

* a. Abide by the ethical principles established by E.O. 12674 (reference (q)), in subsection 12-100 of this Regulation, ethics statutes, and the ethics regulations promulgated by OGE and the DoD thereunder; *

b. Set a personal example for fellow DoD employees in performing official duties within the highest ethical standards;

c. Report suspected violations of ethics regulations in accordance with subsection 10-200 of this Regulation;

- d. Perform all official duties so as to facilitate Federal Government efficiency and economy;
- e. Attend ethics and procurement integrity training as required;
- f. File financial and employment disclosure reports as required.

SECTION 5. REFERENCES

1-500. References

- (a) Federal Acquisition Regulation, Part 3.104, current edition
- (b) Title 41, United States Code, Section 423
- (c) Public Law 95-521, "Ethics in Government Act of 1978," October 26, 1978, as amended
- (d) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (e) Title 5, United States Code, Chapter 53, Subchapter 11, and Sections 552 and 5305
- (f) DoD Directive 5400.7, "DoD Freedom of Information Act Program," May 13, 1988
- (g) Title 5, Code of Federal Regulations, Part 2638, "Office of Government Ethics and Executive Agency Ethics Program Responsibilities," current edition
- (h) DoD Directive 1344.7, "Personal Commercial Solicitation on DoD Installations," February 13, 1986
- (i) Title 18, United States Code, Sections 203, 205, 207, 208, and 209
- (j) Title 3, United States Code, Sections 105 and 106
- (k) Title 37, United States Code, Section 201
- (l) Title 32, United States Code
- (m) Title 5, Code of Federal Regulations, Part 2634, "Financial* Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," current edition
- (n) Title 5, Code of Federal Regulations, Part 2639, "Interpretation of 18 U.S.C. 209," current edition
- (o) Title 5, Code of Federal Regulations, Part 2640, "Interpretation of 18 U.S.C. 208," current edition
- (p) Title 5, Code of Federal Regulations, Part 2641, "Post-Employment Conflict of Interest Restrictions," current edition
- (q) Executive Order 12674, "Principles of Ethical Conduct for

SECTION 2. OFFICIAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-200. Attendance

a. Agency Designees may permit their DoD employees to attend meetings, conferences, seminars or similar events sponsored by non-Federal entities in their official DoD capacities at Federal Government expense if there is a legitimate Federal Government purpose in accordance with 5 U.S.C. 4101 et seq. (reference (b)) and 37 U.S.C. 412 (reference (c)), such as training a DoD employee beyond maintaining professional credentials or gathering information of value to the DoD.

* b. DoD employees are prohibited from attending events sponsored *
* by non-Federal entities in their official DoD capacities at Federal Government expense solely to *
acquire or maintain professional credentials that are a minimum requirement to hold the DoD position. See 5 U.S.C. 5946 (reference (b)) and 31 U.S.C. 1345 (reference (d)).

3-201. Membership.

a. DoD employees may serve as DoD liaisons to non-Federal entities when appointed by the head of the DoD Component command or organization who determines there is a significant and continuing DoD interest to be served by such representation. Liaisons serve as part of their official DoD duties, under DoD Component memberships, and represent only DoD interests to the non-Federal entity in an advisory capacity. Liaisons may not be involved in matters of management or control of the non-Federal entity. Liaisons may officially represent DoD in discussions of matters of mutual interest with non-Federal entities providing it is made clear to the non-Federal entities that the opinions expressed by liaisons do not bind DoD or any DoD Component to any action.

b. DoD employees may not accept DoD Component membership in a non-Federal entity on behalf of DoD except as provided by statute or regulation. DoD may pay for DoD memberships in accordance with opinions of the Comptroller General, such as 24 Comp. Gen. 814 (reference (e)). DoD is prohibited from paying for individual memberships by 5 U.S.C. 5946 (reference (b)). See also 10 U.S.C. 2601 (reference (f)). See subsection 3-301 of this Regulation, below, regarding allotments for payment of individual memberships held in a personal capacity.

3-202. Management. DoD employees may not participate in their official DoD capacities in the management or control of non-Federal entities without authorization from the DoD DAEO. Requests for authorization shall be in writing and forwarded to the DoD DAEO through SOCO. See 36 U.S.C. 5, 121, and 1305 (reference (g)). However, with authorization from the DoD DAEO, DoD employees may participate fully in the management and control of the non-Federal entity, may participate in the determinations and conclusions of the non-Federal entity, and may cast a vote on issues within the scope of the DoD employee's official responsibilities.

3-203. Impartiality of Agency Designee and Travel-Approving Authority.

When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the Agency Designee or travel approving authority is an active participant in the non-Federal entity, that Agency Designee or travel approving authority may not act on the DoD employee's request but shall defer such action to the next higher superior or another independent DoD authority. See 5 C.F.R. 2635.402 and 2635.502 (reference (h)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (i)).

3-204. Impartiality of DoD Employees. DoD employees are generally

prohibited from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year. See 5 C.F.R. 2635.402 and 2635.502 (reference (h)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (i)).

3-205. Remuneration. DoD employees may not receive any salary or salary

supplement from a non-Federal entity for performance of DoD duties. See 18 U.S.C. 209 (reference (i)).

3-206. Co-sponsorship. A DoD Component command or organization is a

co-sponsor of an event when that DoD Component command or organization is one of the organizations that develops the substantive aspects of the event or provides substantial logistical support for the event. Co-sponsorship of events with a non-Federal entity is prohibited except as follows:

a. A DoD Component command or organization may co-sponsor

a civic or community activity, except for fundraising or membership drives, where the head of the DoD Component command or organization determines that the activity is unrelated to the purpose or business of the co-sponsoring, non-Federal entity or the purpose or business of any of its members. See DoD Instruction 5410.20 (reference (j));

b. A DoD Component command or organization may co-sponsor

a conference, seminar or similar event with a non-Federal entity when all of the following requirements are met:

(1) The head of the DoD Component command or

organization finds that the subject matter of the event (or co-sponsored discrete portion) is scientific, technical or professional issues that are relevant to the mission of the DoD Component command or organization;

(2) The head of the DoD Component command or

organization finds that the purpose of co-sponsorship is to transfer Federally developed technology or to stimulate wider interest and inquiry into the scientific, technical or professional issues identified above, and that the event is open to interested parties;

(3) The non-Federal entity is a recognized scientific, technical, educational, or professional organization approved for this purpose by the DoD Component DAEO, giving due consideration to the prohibition against giving preferential treatment to non-Federal entity in 5 C.F.R. 2635.101(b)(8) in subsection 2-100 of this Regulation (reference (h));

(4) The DoD Component command or organization accomplishes the co-sponsorship through a written agreement that includes the nature and purpose of the event; the undertakings and liabilities of the parties; funding responsibilities and costs (including admission fees); a disclaimer of Government liability if the DoD Component command or organization reduces the level of its participation or completely withdraws; and a statement that the non-Federal entity will not use the fact of co-sponsorship of the event to imply DoD endorsement of the organization or its other events. If applicable, the DoD Component command or organization should execute the agreement pursuant to specific statutory authority, such as a contract, grant, or cooperative agreement as identified in 31 U.S.C. 6303 through 6306 (reference (d)); a Cooperative Research and Development Agreement (CRDA) as defined in 15 U.S.C. 3710a (reference (k)); a cooperative agreement or other transaction identified in 10 U.S.C. 2371 (reference (f)).

(5) No admission fee (beyond what will cover the reasonable costs of sponsoring the event) may be charged for a co-sponsored event, or no admission fee (beyond what will cover the reasonable costs of sponsoring the event) may be charged for the discrete portions of the event co-sponsored by the DoD Component.

c. If the DoD Component desires to sponsor an event, but requires assistance in making the arrangements, the DoD Component may arrange, through normal acquisition procedures, to have a non-Federal entity provide whatever assistance is necessary. If the event is open to individuals outside the Federal Government, attendance may not be limited to members of the supporting non-Federal entity. The supporting non-Federal entity may be permitted to mention its support in conference materials, but not in terms which imply that it is sponsoring or co-sponsoring the event.

3-207. Participation in Conferences and Similar Events. Subject to the provisions of subsection 3-211 of this Regulation, below, and in accordance with public affairs regulations and 31 U.S.C. 1345 (reference (d)), DoD employees may participate in their official DoD capacities as speakers or panel members at conferences, seminars, or similar events sponsored by non-Federal entities.

3-208. Distributing Information. In accordance with public affairs regulations, official channels may be used to notify DoD employees of events of common interest sponsored by non-Federal entities.

3-209. **Endorsement.** Endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated nor implied by DoD or DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in subsection 3-210., below. DoD employees may use or allow the use of their titles, positions, or organization names in conjunction with their own names only to identify themselves in the performance of their official duties. Use of titles, positions, and organization names when acting in a personal capacity is covered by subsection 3-300., below. Offering group life insurance programs sponsored by the State Military Department, to the same extent and similar manner as offering of the Servicemen's Group Life Insurance (SGLI) program, is not an endorsement of a non-Federal entity in violation of this Regulation.

3-210. **Fundraising and Membership Drives**

a. DoD employees shall not officially endorse or appear to endorse membership drives or fundraising for any non-Federal entity except the following organizations which are not subject to the provisions of subsection 3-211 of this Regulation, below:

- (1) The Combined Federal Campaign (CFC);
- (2) Emergency and disaster appeals approved by the Office of Personnel Management (OPM);
- (3) Army Emergency Relief;
- (4) Navy-Marine Corps Relief Society;
- (5) Air Force Assistance Fund, including:
 - (a) Air Force Enlisted Men's Widows and Dependents Home Foundation, Inc.;
 - (b) Air Force Village;
 - (c) Air Force Aid Society;
 - (d) General and Mrs. Curtis E. LeMay Foundation.

(6) Other organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members or their dependents when approved by the head of the DoD Component command or organization after consultation with the DAEO or designee. (This includes most morale, welfare and recreation programs, regardless of funding sources).

(7) For National Guard Members who are "DoD employees" as defined in subsection 1-211., above, charitable, community, or civic organizations, as identified in 32 U.S.C. 508 and DoD Directive 1100.20 (references (l) and (m)), when approved by the head of the DoD Component command or organization after consultation with the DAEO, or designee; provided, however, that no member of the National Guard may be ordered, coerced, or compelled to participate in or contribute to any fundraising or membership drives.

b. Fundraising by DoD employees is strictly regulated by E.O.

American National Red Cross (10 U.S.C. 2602); United Seaman's Service Organization (10 U.S.C. 2604); Scouting: Cooperation and Assistance in Foreign Areas (10 U.S.C. 2606); Civil Air Patrol (10 U.S.C. 9441-9442) (reference (f)); and Assistance for certain youth and charitable organizations (32 U.S.C. 508) (reference (l));

- g. The Military Department of each State and territory (section 101 of reference (l)).

SECTION 3. PERSONAL PARTICIPATION IN NON-FEDERAL ENTITIES

3-300. Participation

a. Fundraising and Other Activities. Subject to other provisions of this Regulation, DoD employees may voluntarily participate in activities of non-Federal entities as individuals in their personal capacities, provided they act exclusively outside the scope of their official positions.

(1) Except as provided in 5 CFR 2635.807(b) (reference (h)) in subsection 2-100 of this Regulation, DoD employees may not use or allow the use of their official titles, positions or organization names in connection with activities performed in their personal capacities as this tends to suggest official endorsement or preferential treatment by DoD of any non-Federal entity involved. Military grade and military department as part of an individual's name (e.g., Captain Smith, U.S. Navy) may be used, the same as other conventional titles such as Mr., Ms., or Honorable, in relationship to personal activities.

(2) Purely personal, unofficial volunteer efforts to support fundraising outside the Federal Government workplace (which includes the entire DoD installation) are not prohibited where the efforts do not imply DoD endorsement. The Heads of DoD Component commands or organizations may, on a limited basis, authorize their DoD employees or their dependents to participate in fundraising activities in designated areas on the Federal Government workplace, such as public entrances, in community support facilities and in personal quarters. See E.O. 12353 (reference (n)), 5 C.F.R. 950 (reference (o)), and DoD Directive 1344.7 (reference (x)). These activities may be further limited by Federal Government building and grounds regulations.

b. Professional Associations and Learned Societies. Agency Designees may permit excused absences for reasonable periods of time for their DoD employees to voluntarily participate in the activities of non-profit professional associations and learned societies and may permit the limited use by their DoD employees of Federal Government equipment or administrative support services to prepare papers to be presented at such association or society events or to be published in professional journals when:

- (1) The participation or paper is related to the DoD

employee's official position or to DoD functions, management or mission; and

(2) The Agency can derive some benefit from the participation or preparation, such as expansion of professional expertise by DoD employees or improved public confidence derived from the professional recognition of the DoD employee's competence;

(3) The participation or preparation of the paper does not interfere with the performance of official DoD duties.

* c. Community Support Activities. Agency Designees may permit
excused absences for reasonable periods of time for their DoD employees to voluntarily participate
in community support activities that promote civic awareness and uncompensated public service
such as disaster relief events, blood donations, and voting and registering to vote. *

* d. Impartiality of Agency Designee and Travel Approving
Authority. When a DoD employee requests permission to travel to or participate in activities of a
non-Federal entity and the Agency Designee or travel approving authority is an active participant
in the non-Federal entity, that Agency Designee or travel approving authority may not act on the
DoD employee's request but shall defer such action to the next higher superior or another
independent DoD authority. See 5 C.F.R. 2635.402 and 2635.502 (reference (h)) in subsection
2-100 of this Regulation and 18 U.S.C. 208 (reference (i)). *

* 3-301. Membership and Management. DoD employees may become
members and may participate in the management of non-Federal entities as individuals in a
personal capacity provided they act exclusively outside the scope of their official position. Except
for such service in the organizations listed in subsection 3-210.a. of this Regulation, above, a DoD
employee may not serve in a personal capacity as an officer, member of the Board of Directors, or
in any other similar position in any non-Federal entity offered because of their DoD assignment or
position. DoD employees may authorize an allotment for membership dues to a non-Federal
entity as provided in 5 C.F.R. 550.311 and 550.331 (reference (w)) and DoD 7000.14-R (reference
(x)). *

* 3-302. Impartiality of DoD Employees. DoD employees are generally
prohibited from engaging in any official activities in which a non-Federal entity is a party or has a
financial interest if the DoD employee is an active participant in the non-Federal entity or has been
an officer in the non-Federal entity within the last year. See 5 C.F.R. 2635.402 and 2635.502
(reference (h)) in subsection 2-100 of this Regulation and 18 U.S.C. 208 (reference (i)). *

3-303. Interference with Employment of Local Civilians. Enlisted members
on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit,
business, or professional activity if it interferes with the customary or regular employment of local
civilians in their art, trade, or profession. See 10 U.S.C. 974 (reference (f)).

b. Security Clearance. A lecture, speech, or writing that pertains to military matters, national security issues, or subjects of significant concern to DoD shall be reviewed for clearance by appropriate security and public affairs offices prior to delivery or publication.

* c. Honoraria. Compensation for a lecture, speech or writing may be restricted by the honoraria prohibition of 5 U.S.C. App. 501 (reference (b)) and 5 C.F.R. 2636 (reference (a)) in subsection 3-100 of this Regulation, above. However, on February 22, 1995, the U.S. Supreme Court decided United States v. National Treasury Employees Union (reference (bb)), affirming a court of appeals decision enjoining enforcement of the honoraria prohibition against Federal employees below grade GS-16. The ban may still be enforceable against Federal employees in grades GS-16 or above and those paid under other schedules. Section 542 of Public Law 102-484 (reference (cc)) exempts military officers and civilian employees at certain schools within the Department of Defense from the statutory ban on receipt of honoraria. A list of such schools is maintained by the Chairman of the Joint Chiefs of Staff. The restrictions of 5 C.F.R. 2635.807(a) (reference (h)) in subsection 2-100 of this Regulation continue to apply to all DoD employees. *

SECTION 4. REFERENCES

3-400. References

- (a) Title 5, Code of Federal Regulations, Part 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria," current edition
- (b) Title 5, United States Code, Chapter 71, App. 501, 4101 and 5946
- (c) Title 37, United States Code, Section 412
- (d) Title 31, United States Code, Sections 1345, and 6303 through 6306
- (e) Decisions of the Comptroller General, Volume 24, page 814, 1945
- (f) Title 10, United States Code, Sections 177, 178, 974, 2012, 2371, 2541, 2542, 2544, 2545, 2546, 2548, 2601, 2602, 2604, 2606, 3634, 6223, 8634, 9441 and 9442
- (g) Title 36, United States Code, Sections 5, 121, and 1305
- (h) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition
- (i) Title 18, United States Code, Sections 208 and 209

- (j) DoD Instruction 5410.20, "Public Affairs Relations with Business and Nongovernmental Organizations Representing Business," January 16, 1974
- (k) Title 15, United States Code, Section 3710a
- (l) Title 32, United States Code, Section 508
- (m) DoD Directive 1100.20, "Support and Services for Eligible Organizations and Activities Outside the Department of Defense," January 30, 1997
- (n) Executive Order 12353, "Charitable Fund-Raising," March 23, 1982, as amended
- (o) Title 5, Code of Federal Regulations, Part 950, "Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations," current edition
- (p) DoD Directive 5035.1, "Fund-Raising Within the Department of Defense," August 28, 1990
- (q) DoD Instruction 5035.5, "DoD Combined Federal Campaign - Overseas Area," August 17, 1990
- (r) DoD Directive 5410.18, "Community Relations," July 3, 1974
- (s) DoD Directive 1000.11, "Financial Institutions on DoD Installations," July 26, 1989
- (t) DoD Directive 1330.12, "United Service Organizations, Inc.," November 9, 1987
- (u) DoD 1400.25-M, "DoD Civilian Personnel Manual," January 24, 1978, authorized by DoD Directive 1400.25, "Department of Defense Civilian Personnel Manual System," January 24, 1978
- (v) Executive Order 10927, "Abolishing the President's Committee on Fund-Raising Within the Federal Service and Providing for the Conduct of Fund-Raising Activities," March 18, 1961
- (w) DoD Instruction 5010.30, "Intramangement Communication and Consultation," May 2, 1989
- (x) DoD Directive 1344.7, "Personal Commercial Solicitation on DoD Installations," February 13, 1986
- (y) Title 5, Code of Federal Regulations, Part 550, "Pay Administration," current edition
- (z) DoD 7000.14-R, "Financial Management Regulation," June 1994, authorized by DoD Instruction 7000.14, November 15, 1992
- (aa) DoD Directive 6025.7, "Off Duty Employment by DoD Health Care Providers," October 21, 1985
- (bb) United States et al. v. National Treasury Employees Union et al., No. 93-1170, slip op. (Sup. Ct., February 22, 1995)
- (cc) Public Law 102-484, "National Defense Authorization Act of 1993," October 23, 1992

SECTION 3. GUIDANCE ON 18 U.S.C. 208 (reference (c))

5-300. Conflicts and Appearance of Conflicts Under 18 U.S.C. 208 (reference (c)). See 5 C.F.R. 2635, Subpart D and Subpart E (reference (d)), in subsection 2-100 of this Regulation, OGE opinions (reference (e)), and subsection 2-204 of this Regulation for provisions on conflicts of interest under 18 U.S.C. 208 (reference (c)).

5-301. Applicability to Enlistees and National Guard Members. The provisions of 18 U.S.C. 208 (reference(c)) and related provisions of OGE regulations do not apply to "Title 32 National Guard Members" or enlisted members of the Uniformed Services. However, provisions similar to section 208 of reference (c) do apply to enlisted members of the Uniformed Services and "Title 32 National Guard Members" as follows: **except as approved by the DoD Component DAEO, or designee, a "Title 32 National Guard Member" and an enlisted member of the Uniformed Services, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest.**

5-302. Waiver of 18 U.S.C. 208(a). Miscellaneous exemptions from application of 18 U.S.C. 208(a) (reference (c)) appear in 5 C.F.R. 2640 (reference (b)) in subsection 5-200 of this Regulation. Pursuant to 18 U.S.C. 208(b) (reference (c)), application of 18 U.S.C. 208(a) (reference (c)) may be waived by individual Agencies.

a. The regulatory waivers for DoD under 18 U.S.C. 208(b)(2) (reference (c)) have been preserved and are reprinted in Appendix D of this Regulation as follows (see 5 C.F.R. 2635.402(d) (reference (d))):

- (1) For civilian DoD Components, such waivers appear in 32 C.F.R. 40.1 (reference (f));
- (2) For the Department of the Army, such waivers appear in AR 600-50 (reference (g));
- (3) For the Department of the Air Force, such waivers appear in AFR 30-30 (reference (h));
- (4) For the Department of the Navy, such waivers appear in SECNAVINST 5370.2J (reference (i)).

b. Application of 18 U.S.C. 208(a) (reference (c)) may be waived for individuals when a financial interest is not so substantial as to be likely to affect the integrity of the services that the Federal Government may expect from the DoD employee. Considerations in determining whether the interest is not so substantial as to be deemed likely to affect the integrity of the services that the Federal Government may expect from the DoD

employee include:

- (1) The extent to which the DoD employee's exercise of authority and responsibility can affect his interest;
- (2) The relative importance of the interest in the DoD employee's life or finances;
- (3) The potential for harm to the Federal Government and to the DoD employee if the DoD employee's interests influence his decision-making;
- (4) How the situation would appear to an informed public;
- (5) The nature of the relationship between the DoD employee and the individual who has the interest concerned.

c. In order to pursue an individual waiver under 18 U.S.C. 208(b)(1) (reference (c)), the following steps are mandatory:

(1) Before a waiver is requested, consideration should first be given to alternative resolutions, such as disqualification, divestiture, reassignment, or rearrangement of duties. Individual waivers are to be considered only when all alternatives have been exhausted. The supervisor should also consider, with the advice of the Ethics Counselor, whether a potential violation of 18 U.S.C. 208(a) (reference (c)) exists. See subsection 5-303 of this Regulation, below. Even if the interests are insubstantial, consideration should be given to whether the particular matter will have a direct and predictable effect on the financial interest. See 5 C.F.R. 2635.402(b)(1) (reference (d)) in subsection 2-100 of this Regulation;

(2) A request for a waiver shall be forwarded through the chain of command or supervision to the DoD Component DAEO. The DoD Component DAEO shall consult, if practicable, on the action with OGE;

(3) Pending the approval of the waiver, the DoD employee shall be disqualified from participation in the particular matter that will have an effect on the financial interest;

(4) The waiver request shall include the Ethics Counselor's findings of fact on the following:

- (a) The manner in which the financial interest was acquired;
- (b) The purpose behind the DoD employee's acquisition of the interest;

c. 18 U.S.C. 203 (reference (c)) does not prohibit giving testimony under oath or making statements required to be made under penalty of perjury.

d. 18 U.S.C. 203 (reference (c)) does not prohibit representation, with or without compensation, of one's parents, spouse, child, or any person or estate the DoD employee serves as administrator, guardian or other personal fiduciary. This exemption is permitted only if approved by the DoD official responsible for appointing the DoD employee to his DoD position. The exemption may not be extended to the DoD employee's representation of any such person in matters in which the DoD employee has officially participated personally and substantially or in matters which, even absent such participation, are the subject of his official responsibility.

e. The head of a department or agency may authorize a special Government employee to represent his regular employer or other outside organization in the performance of work under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the Federal Register that the national interest requires such representation.

5-402. Contracts with DoD Employees. Contracts for the procurement of goods and services between the Federal Government and its employees are prohibited unless the needs of the Federal Government cannot otherwise be met. See FAR 3.601 and 3.602 (reference (m)) in Appendix B of this Regulation.

5-403. Representation of Others

a. Prohibition Under 18 U.S.C. 205 (reference (c)). 18 U.S.C. 205 (reference (c)) prohibits DoD employees, other than enlisted members, whether or not they are employed for compensation, from personally acting as an agent or attorney for anyone else before a department, agency, or court in connection with any covered matter in which the United States is a party or has a direct and substantial interest or from prosecuting any claim against the Federal Government or receiving any gratuity or interest in such claim for assistance in prosecuting the claim. Covered matter means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

b. Exceptions. The following are excluded from the scope of 18 U.S.C. 205 (reference (c)):

(1) Giving testimony under oath or making statements required to be made under penalty of perjury or representing another

person, with or without compensation, in a disciplinary, loyalty, or other personnel administration proceeding;

(2) Representing, with or without compensation, one's parents, spouse, child, or a person or estate the DoD employee serves as a fiduciary, but only if approved by the DoD official responsible for appointing the DoD employee to this DoD position. This exception does not apply to matters in which the DoD employee has participated personally and substantially or which, in the absence of such participation, are the subject of his official DoD responsibility;

(3) The head of a department or agency may allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the Federal Register that the national interest requires such representation;

(4) For special Government employees, the prohibitions apply only to covered matters in which they participated personally and substantially as a special Government employee. Absent such participation, the prohibitions apply only if he served more than a total of 60 days during the preceding 365 days and the covered matter was pending in the DoD Agency during that period.

5-404. Compensation From Other Sources

a. The provisions of 18 U.S.C. 209 (reference (c)) and related provisions of OGE regulations do not apply to enlisted members of the Uniformed Services or "Title 32 National Guard members." However, provisions similar to section 209 of reference (c) do apply to enlisted members of the Uniformed Services and "Title 32 National Guard Members" as follows: a "Title 32 National Guard Member" and **an enlisted member, except an enlisted special Government employee, shall not receive any salary or supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government.**

b. 18 U.S.C. 209 (reference (c)) prohibits DoD employees from receiving pay or allowances or supplements of pay or benefits from any source other than the United States for the performance of official service or duties unless specifically authorized by law. Note that a task or job that is performed outside normal working hours does not necessarily allow acceptance of payment for performing it. If the undertaking is part of one's official duties, pay for its performance may not be accepted from any source other than the United States regardless of when it was performed.

c. A DoD employee may continue to participate in a bona fide pension, retirement, insurance, bonus, or other employee welfare or

SECTION 2. PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278)

7-200. Individuals Required to File

a. Covered Positions. For purposes of this section, the following individuals are in "covered positions" and are required by the Ethics in Government Act of 1978, Pub. L. 95-521 (reference (b)) to file an SF 278, Appendix C of this Regulation, with their DoD Component DAEO or designee as set out in subsection 7-205 of this Regulation, below:

(1) Civilian Presidential appointees;

* (2) Regular military officers whose pay grade is 0-7, or *
* above, and Reserve officers whose pay grade is 0-7, or above, and who have served on active *
* duty more than 60 days during a calendar year; *

(3) Members of the Senior Executive Service;

(4) Other civilian DoD employees, including special Government employees, whose positions are classified above GS/GM-15 prescribed by 5 U.S.C. 5332 (reference (c)) or civilian DoD employees under other pay systems whose rate of basic pay is fixed at or above 120% of the minimum rate of basic pay for a GS/GM-15;

(5) DoD employees in the excepted service in positions that are of a confidential or policy-making character unless they have been excluded by the Director, OGE. See subsection 7-200.d. of this Regulation, below;

(6) Individuals serving by appointment under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c));

(7) Civilian individuals who are detailed to positions described in subsection 7-200.a.(3) through 7-200.a.(5) of this Regulation, above;

(8) DoD Component DAEOs.

b. Waiver. An individual otherwise required to file an SF 278, Appendix C of this Regulation, but who now is expected to perform the duties of a covered position for less than 130 days in a calendar year, may request a waiver of any or all reporting requirements from the Director, OGE, in accordance with 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation, above.

c. Exception. An individual who is nominated to or assumes a covered position is not required to file an SF 278, Appendix C of this Regulation, if the Secretary

concerned or the DoD Component DAEO determines that the individual is not reasonably expected to perform the duties of the position for more than 60 days in a calendar year. If such individual performs the duties of the position for more than 60 days in a calendar year, an SF 278, Appendix C of this Regulation, shall be filed within 15 days after the 61st day of duty.

d. Exclusion. The Director, OGE, may exclude an individual who is in a covered position under subsection 7-200.a.(5) of this Regulation, above, from the requirement to file an SF 278, Appendix C of this Regulation, in accordance with 5 C.F.R. 2634.203 (reference (a)) in subsection 7-100 of this Regulation, above.

7-201. Information on Covered Positions. The directors of DoD Component personnel offices are responsible for providing the following information to their DoD Component DAEOs or designees:

a. The name, position, grade, organization and entrance-on-duty or termination date of each individual assigned to the DoD Component who is required to file a new entrant or termination SF 278, Appendix C of this Regulation, immediately upon the appointment of the individual to a position requiring filing, or upon receipt of an SF 52, "Request for Personnel Action," August 1988, Appendix C of this Regulation, requesting approval of the retirement, resignation, or removal of the individual from such a position;

b. By January 10 of each year, the name, position, grade, and organization of each individual assigned to the DoD Component who is required to file an annual SF 278, Appendix C of this Regulation.

7-202. Notification of Requirement to File. Each DoD Component DAEO or designee shall provide appropriate notices and instructions to all reporting individuals to ensure the timely preparation of the reports and submission to supervisors and Ethics Counselors for review and filing. The SF 278, Appendix C of this Regulation, may be accessed through the internet at <http://web1.whs.osd.mil/diorhome.htm>.

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--7-203. Time of Filing

a. Nomination Reports

(1) Any time after public announcement but within five days after transmittal by the President to the Senate of the nomination of an individual to a civilian DoD position that requires the advice and consent of the Senate, the DoD Component DAEO shall ensure the nominee's SF 278, Appendix C of this Regulation, is filed with appropriate authorities.

(2) The report shall contain the information prescribed in the "Instructions for Completing SF 278" attached to the SF 278,

Appendix C of this Regulation. These reports shall be certified by the DoD Component DAEO, and processed as prescribed by OGE regulation, 5 C.F.R. 2634 (reference (a)) in subsection 7-100 of this Regulation, above.

(3) Unless otherwise required by the Senate, nomination reports are not required of individuals nominated to positions as military officers. Such individuals must file new entrant reports as prescribed below.

b. New Entrant Reports

(1) Within 30 days of assuming a covered position, a reporting individual shall submit an SF 278, Appendix C of this Regulation.

(2) The report shall contain the information prescribed for new entrant reports in the "Instructions for Completing SF 278" attached to the SF 278, Appendix C of this Regulation.

(3) No new entrant report is necessary if the reporting individual has, within 30 days prior to assuming a new position, left another covered position for which the reporting individual filed an SF 278, Appendix C of this Regulation.

(4) Reserve military officers shall file a new entrant report within 30 days after the 61st day of serving on active duty during any calendar year (see 10 U.S.C. 101(d)(1) and 32 U.S.C. 101(12) (references (b) and (c))) for the first time in the grade of O-7.

c. Annual Reports. Any time after January 1 but not later than May 15, a reporting individual who served in a covered position for more than 60 days during the preceding calendar year shall file an annual SF 278, Appendix C of this Regulation. For Reserve military officers, only service pursuant to orders issued under title 10, United States Code, is counted.

d. Termination Reports. Not sooner than 15 days before but not later than 30 days after termination from a covered position, a reporting individual shall submit an SF 278, Appendix C of this Regulation. A termination report is not required of a reporting individual who, within 30 days of such termination, assumes another covered position. A termination report is not required of a Reserve military officer in the grade of O-7 or above who did not serve more than 60 days on active duty during the calendar year in which the military officer is transferred to the Retired Reserve.

e. Extension of Filing Deadlines. The DoD Component DAEO, in the case of civilian Presidential appointees, and the DoD Component DAEO or designee in other cases, may grant, for good cause, a filing extension up to 45 days. All requests for extensions shall be provided, in writing, by the reporting individual to the DoD Component DAEO or designee. The request shall contain a clear statement of the reasons for the request and shall be submitted in advance of the original filing deadline. Requests for additional time beyond the initial 45 day extension shall be forwarded by the appropriate DoD Component DAEO or designee with his comments to the Director, OGE, who may grant an additional 45 days extension. The reporting individual shall notify his supervisor of any extension granted.

f. Combined Annual and Termination Reports. Reporting individuals who anticipate terminating their DoD employment before June 30 may request an extension from the appropriate DoD Component DAEO or designee of up to 45 days in order to file one consolidated annual and termination report. Combined annual and termination reports must be filed within 30 days after termination of employment or service but not later than July 15.

g. Late Filing Fee

(1) Any reporting individual who is required to file an SF 278, Appendix C of this Regulation, and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 late filing fee. See 5 CFR 2634 (reference (a)) in subsection 7-100., above. For the purpose of determining if the fee should be imposed, the report shall be deemed filed when it is delivered to the first reviewing official. That individual shall note the date of receipt on the report and should forward the report through the chain of submission to the DoD Component DAEO, or designee, within 30 days of receipt. If the forwarding of the report will be delayed, the Ethics Counselor must send a written explanation within 30 days of receipt of the SF 278.

(2) The fee shall be collected by the DoD Component DAEO or designee for deposit with the U.S. Treasury. If the reporting individual fails to remit the \$200 fee within 90 days, the fee shall be subject to DoD Component debt collection procedures.

(3) If extraordinary circumstances existed that caused the late submission of the report, a request for a waiver of the fee may be submitted by the reporting individual with supporting documentation to the DoD Component DAEO or designee. The DoD Component DAEO or designee shall review the request and forward it with a recommendation for approval or denial to OGE. OGE will grant or deny the waiver.

7-204. Content of Report

a. Instructions for completing the SF 278, Appendix C of this Regulation, are attached to the form. See detailed instructions at 5 C.F.R. 2634.301 through 2634.408 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance or contact the local Ethics Counselor.

b. A complete report is required even if no changes have occurred since the last submission.

c. Termination reports shall contain information covering the preceding calendar year, if an annual report was not filed for that year, and that portion of the present calendar year up to the date of termination from the covered position.

d. A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate even if it limits disclosure to the reporting individual.

7-205. Chain of Submission. A reporting individual shall submit his SF 278, Appendix C of this Regulation, as follows:

a. A civilian Presidential appointee shall file directly with his DoD Component DAEO or designee;

b. Any other reporting individual shall submit his SF 278, Appendix C of this Regulation, through his supervisor and through his Ethics Counselor to the DoD Component DAEO or designee. In some cases, the Ethics Counselor and the DoD Component DAEO or designee are the same person;

(1) A military officer serving in a DoD Component or in the Central Intelligence Agency shall submit his report through his supervisor directly with the DAEOs or designees of those agencies;

(2) A military officer serving in OSD or for the Chairman of the Joint Chiefs of Staff and Joint Staff, shall submit his report, through his supervisor, to the GC, DoD, as the DoD Component DAEO;

(3) A military officer serving in a joint, Unified, Specified or Combined Commands, other than a Commander in Chief, shall file through his supervisor directly with his DoD Component DAEO or designee. A Commander in Chief of such command shall file with the Legal Advisor to the Chairman of the Joint Chiefs of Staff.

c. A reporting individual who has more than one immediate supervisor shall submit his report through both supervisors prior to submitting it to the DoD Component DAEO or designee. Such a reporting individual may submit a copy of his report to one supervisor and the original to the other in order to expedite processing;

d. Reporting individuals on detail to other Executive or Legislative Branch Agencies shall follow the filing requirements and procedures of those agencies.

7-206. Review

a. Initial Supervisor Review. Upon receipt of an SF 278, Appendix C of this Regulation, the supervisor of the reporting individual shall review the report to determine if any of the reported financial interests reveal a conflict of interest with the reporting individual's current and future official duties. See 5 C.F.R. 2634.605(b) (reference (a)) in subsection 7-100 of this Regulation, above. The supervisor shall supplement the report with any required information or data, including comments on the existence of actual or apparent conflicts of interest, and forward the report with all attachments to the Ethics Counselor. If any review reveals a conflict or apparent conflict, the supervisor shall ensure that the matter is resolved in accordance with subsection 7-206.b.(7), below. No supervisory review is required for termination reports or reports filed by Presidential appointees confirmed by the Senate.

b. Ethics Counselor Review

(1) When applicable, the Ethics Counselor shall review each report to determine that:

(a) Each item is completed; and

(b) No interest or position disclosed on the report violates or appears to violate:

1 Any applicable provision of Chapter 11 of title 18, United States Code (reference (f));

2 Pub. L. 95-521 (reference (d)), and implementing regulations;

3 E.O. 12674 (reference (g)), in subsection 12-100 of this Regulation and implementing regulations; or

4 Any other related laws or regulations applicable to DoD employees.

(2) The reports are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, to ensure that there are no omissions, the previous report of each reporting individual, if applicable, shall be compared to the current submission. The Ethics Counselor shall submit termination reports directly to the DoD Component DAEO, or designee.

(a) Navy shore installations with 500 or more military and civilian DoD employees (including foreign nationals and indirect hire personnel regularly attached but excluding personnel attached for temporary duty); and

(b) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(2) Special Government employees, except the following categories of DoD employees who are required to file reports only when specifically requested to do so by their supervisor:

(a) Physicians, dentists, and allied medical specialists engaged only in providing services to patients;

(b) Veterinarians providing only veterinary services;

(c) Lecturers participating only in educational activities;

(d) Chaplains performing only religious services;

(e) Individuals in the motion picture or television fields who are utilized only as narrators or actors in DoD productions;

(f) Reservists on active duty for less than 30 consecutive days during a calendar year; and

(g) Members of selection panels for ROTC candidates.

(3) DoD employees classified at GS/GM-15 or below under 5 U.S.C. 5332 (reference (c)) or a comparable pay level under other authority, and members of the military below the grade of O-7 as follows:

(a) When the official responsibilities of such DoD employees require them to participate personally and substantially through decision or exercise of significant judgment in taking an official action for contracting or procurement, administering or monitoring grants, subsidies, licenses or other Federally conferred financial or operational benefits, regulating or auditing any non-Federal entity, or other activities in which the final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity;

(b) Any DoD employees serving in a position in which his supervisor determines that the duties and responsibilities of the position require the DoD

employee to file such a report to avoid an actual or apparent conflict of interest and to carry out the purpose of any statute, Executive Order, or regulation applicable to or administered by that reporting individual;

(4) Individuals who are detailed to positions described in subsection 7-300.a.(3) of this Regulation, above.

(5) Individuals serving on detail under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371-3376 (reference (c)).

b. Exclusion

(1) Any DoD employee or group of DoD employees may be excluded from all or a portion of the reporting requirements when the DoD Component Head or designee determines that a report is unnecessary because of the remoteness of any impairment to the integrity of the Federal Government, because of the degree of supervision and review of the DoD employee's work, or because the use of an alternative procedure is adequate to prevent possible conflicts of interest. Any alternative procedure must be approved in writing by OGE.

(2) DoD employees who are not employed in contracting or procurement and who have decisionmaking responsibilities regarding expenditures of less than \$2,500 per purchase and less than \$20,000 cumulatively per year are excluded from the requirement to file the OGE Form 450 (formerly SF 450), Appendix C of this Regulation. However, Agency Designees may require such DoD employees, in individual cases, to file the OGE Form 450, Appendix C of this Regulation. Such DoD employees remain subject to conflict of interest statutes and regulations.

(3) The use of OGE Optional Form (OF) 450-A, "Confidential Certificate of No New Interests," Appendix C of this Regulation, is adequate to prevent possible conflicts of interest. DoD employees who are eligible to file OGE OF 450-A under 5 CFR 2634.905(d) (reference (a)) in subsection 7-100, above, may be excluded from filing the OGE Form 450, Appendix C of this Regulation, subject to the following conditions:

(a) With the exception of filing OGE OF 450-A, Appendix C of this Regulation, instead of filing OGE Form 450, Appendix C of this Regulation, all other applicable requirements of Chapter 7 of this Regulation must be observed.

(b) The reporting individual must attach a copy of his or her most recent OGE Form 450, Appendix C of this Regulation, to the OGE OF 450-A, Appendix C of this Regulation.

(c) The OGE OF 450-A, Appendix C of this Regulation, with an attached copy of the reporting individual's most recent OGE Form 450, Appendix C of this Regulation, must be reviewed and signed by the reporting individual's supervisor and forwarded to the local Ethics Counselor.

(d) In each year divisible by four, beginning in the year 2000, all incumbent filers must file an OGE Form 450, Appendix C of this Regulation, rather than the OGE OF 450-A, Appendix C of this Regulation.

7-301. Information on Covered Positions

a. The directors of personnel offices are responsible for providing the following information to their DoD Component DAEs or designees they service:

shall coordinate with the supervisors within their organization, in consultation with the DoD Component DAEO or designee, to update the list of annual reporting individuals in their organization and report any additions or deletions to the concerned Ethics Counselor by October 31 of each year. In addition, it is the Administrative Officers' responsibility to ensure that any new positions are evaluated to determine whether such reports are required; or

(2) The directors of personnel offices shall coordinate with Ethics Counselors and supervisors to ensure that position or billet descriptions of reporting individuals described in subsection 7-300 of this Regulation, above, contain a statement that an SF 450, Appendix C of this Regulation, must be filed. All new or revised position or billet descriptions shall be reviewed to determine whether such reports are required.

* 7-302. Notification of Requirement to File. DoD Component DAEOs or designees
* shall provide appropriate notices and instructions to ensure the timely preparation of the reports
* and submission to their supervisors and their Ethics Counselors for review and filing. The SF 450,
* Appendix c of this Regulation, may be accessed through the internet at *
* <http://web1.whs.osd.mil/diorhome.htm>. *

7-303. Time of Filing

a. New Entrant Reports

(1) Except for a special Government employee, a reporting individual shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor not later than 30 days after assuming duties in a covered position. Upon transfer or reassignment from one covered position to another, a reporting individual shall submit a copy of his previous report to the appropriate supervisor of the new position.

(2) A special Government employee shall submit an SF 450, Appendix C of this Regulation, with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor before assuming duties in a covered position. A special Government employee whose appointment is renewed shall file a new entrant report for the preceding 12 months prior to his reappointment. A special Government employee whose appointment exceeds one year shall file a new entrant report on the anniversary of his appointment.

b. Annual Reports. A reporting individual (except a special Government employee) who was employed at least 61 days during the preceding reporting period must submit an SF 450, Appendix C of this Regulation, to his Ethics Counselor by November 30 of each year covering the preceding 12 months (or any portion thereof not covered by a new entrant report), with information current as of September 30 of that year. A reporting individual

who is reassigned or transferred from one covered position to another during the reporting period shall file an annual report whether or not he was employed in that position for 61 days.

c. Extension of Filing Deadline

(1) When required by reason of duty assignment, infirmity, or other good cause affecting a reporting individual, the DoD Component DAEO or designee may grant an extension of the filing deadline, not to exceed 60 days for annual reports or 90 days for new entrant reports.

(2) Requests for extensions shall be submitted in writing.

(3) Each annual reporting individual is automatically granted a 30 day extension by this Regulation to make the reporting deadline November 30 as stated in subsection 7-303.b. of this Regulation, above. This automatic extension need not be annotated on an individual report. Any other extension shall be noted.

7-304. Content of Report

a. Instructions for completing the SF 450, Appendix C of this Regulation, are included on the report. See instructions at 5 C.F.R. 2634.907 and 908 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance or contact the local Ethics Counselor.

b. A complete report is required even though no changes have occurred since the last submission.

c. A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate, even if it limits disclosure to the reporting individual.

7-305. Chain of Submission. A reporting individual shall submit his SF 450, Appendix C of this Regulation, through his supervisor to his Ethics Counselor. It is the responsibility of the reporting individual to ensure that an annual report is filed by November 30.

7-306. Review

a. Upon receipt of an SF 450, Appendix C of this Regulation, the supervisor of the reporting individual shall provide an initial review of the report using the criteria set forth in subsection 7-306.b. of this Regulation, below, and forward it with any comments to the local Ethics Counselor for further review.

7-309. Status Reports

a. Not later than December 15 of each year, Ethics Counselors shall prepare a consolidated status report concerning the annual filing of the SF 450, Appendix C of this Regulation. The status report shall be sent through the head of the DoD Component command or organization to the respective DoD Component DAEO or designee and shall contain the following information:

(1) The number of individuals required to file an annual SF 450, Appendix C of this Regulation; and

(2) The number of individuals who have not filed an SF 450 as of November 30.

b. Subsequent to December 15, monthly reports may be required by the DoD Component DAEO to be filed for those organizations which have not received an SF 450, Appendix C of this Regulation, from all reporting individuals required to file, until 100% compliance has been achieved. These monthly reports shall be forwarded as described in subsection 7-309.a., above.

7-310. Penalties

a. Administrative Penalties. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to disciplinary action by the employing organization, including such measures as suspension of consideration for appointment, reassignment of duties and termination of employment.

b. Criminal Liability. Anyone who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001 (reference (d)).

SECTION 4. REFERENCES

7-400. References

- (a) Title 5, Code of Federal Regulations, Part 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees," current edition
- (b) 10 United States Code, Section 101
- (c) 32 United States Code, Section 101
- (d) Public Law 95-521, "Ethics in Government Act of 1979," October 26, 1978, as amended
- (e) Title 5, United States Code, Sections 552, 552a, 3371-3376, and 5332
- (f) Title 18, United States Code, Chapter 11, Sections 208 and 1001
- (g) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees"

CHAPTER 8
SEEKING OTHER EMPLOYMENT

SECTION 1. GENERAL RULES

8-100. Office of Government Ethics Regulation. 5 C.F.R. 2635, Subpart F (reference (a)) in subsection 2-100 of this Regulation, provides rules on seeking other employment that apply to all DoD employees.

SECTION 2. CONFLICT OF INTEREST - (18 U.S.C. 208) (reference (b))

8-200. Negotiating for Employment. See 5 C.F.R. 2635.603 (reference (a)) in subsection 2-100 of this Regulation for provisions on conflicts of interest in employment negotiations under 18 U.S.C. 208 (reference (b)). The provisions of 18 U.S.C. 208 (reference (b)) and related provisions of OGE regulations do not apply to enlisted members of the Uniformed Services or "Title 32 National Guard Members." However, provisions similar to section 208 of reference (b) do apply to enlisted members of the Uniformed Services and "Title 32 National Guard Members," as follows: **except as approved by the DoD Component DAEO, or designee, a "Title 32 National Guard Member" and an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest.** See 18 U.S.C. 208 (reference (b)), subsections

1-300(b)(1)(a) and 5-301 of this Regulation, and 5 C.F.R. 2635.603 (reference (a)) in subsection 2-100 of this Regulation.

8-201. Penalties. Violation of 18 U.S.C. 208 (reference (b)) is punishable by a fine and imprisonment. The full range of administrative sanctions may also be imposed.

SECTION 3. PROCUREMENT INTEGRITY - (41 U.S.C. 423(b))
(reference (c))

8-300. Soliciting, Accepting, or Discussing Employment

a. During the conduct of a procurement, a procurement official may not knowingly, directly or indirectly, solicit or accept from, or discuss with, any officer, employee, representative, agent, or consultant of a competing contractor, any future employment or business opportunity. See FAR 3.104-6 (reference (d)) in Appendix B of this Regulation.

b. This prohibition does not apply to a procurement official:

- (1) After he leaves Federal Government service;
- (2) Who is employed by a contractor, subcontractor, consultant, expert, or advisor after he ceases to act on behalf of, or provide advice to, the procuring agency concerning the procurement;

CHAPTER 10

ENFORCEMENT

SECTION 1. ENFORCEMENT OF THE PROVISIONS OF THE JOINT ETHICS REGULATION

* 10-100. Penalties *

* a. Penalties for violation of the rules republished in, and *
prescribed by, this Regulation include applicable criminal, civil and administrative *
sanctions for current DoD employees, including punishment under the Federal UCMJ *
(reference (a)) for military members subject to the Federal UCMJ. Many of the statutes that *
regulate the post-Government service Federal employment activities of former or retired DoD *
employees also provide for specific criminal and administrative sanctions. This Chapter sets out
the requirements for reporting and inquiry to ensure that ethics-related laws and regulations are
properly enforced and that appropriate administrative or disciplinary action is taken.

* b. For National Guard Members who are subject to this Regulation, *
but are not subject to the Federal UCMJ or other Federal statutes, regulations, or directives, the
method of enforcement for this Regulation is the applicable State code of military justice
or other applicable State statutes or regulations. *

SECTION 2. REPORTING PROCEDURES

10-200. Reporting Suspected Violations. With the exception of the provisions
of 41 U.S.C. 423 (reference (b)) that are addressed in subsection 10-202 of this Regulation,
below, DoD employees who suspect that a violation of

this Regulation has occurred shall report the matter to any of the following:

- a. The DoD employee's Agency Designee;
- b. The suspected violator's Agency Designee;
- c. The head of the DoD Component command or organization;
- d. Any Ethics Counselor;
- e. The DoD Component's IG;
- f. The DoD Component's criminal investigative office;
or
- g. The DoD hotline or DoD Component hotline.

10-201. Receipt of Report

a. DoD Component investigative offices shall consult local Ethics Counselors as appropriate to ensure that up-to-date expertise is applied in the investigation of each suspected violation of this Regulation in recognition of rapidly changing rules and statutes in the ethics area.

CHAPTER 11

TRAINING

SECTION 1. OFFICE OF GOVERNMENT ETHICS REGULATION

* 11-100. Subpart G of 5 CFR 2638, "Executive Agency Ethics Training
* Programs" (reference (a))

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EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS

Subpart G of 5 CFR 2638^{1/}

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¹ This reprint has had typeface and spacing revisions made for clarity. Although no changes were made to the text, only the original rule is authoritative.

* EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS...,5 CFR 2638, Subpart G *

Subpart G--Executive Agency Ethics Training Programs

5 C.F.R. § 2638
as amended by the interim rule
62 Federal Register 11307-11314 (March 12, 1997)

Effective Date: June 10, 1997, EXCEPT for § 2638.704(d)(2)(ii)
and Examples 1-3 following that paragraph,
which will become effective on January 1, 1998.

§ 2638.701 Executive agency ethics training programs; generally.

Each executive branch agency shall maintain a program of ethics training designed to ensure that all of its employees are aware of: the Federal conflict of interest statutes, located at chapter 11 of title 18 of the United States Code; the Principles of Ethical Conduct, found in part I of Executive Order 12674, as modified; the Standards of Ethical Conduct for Employees of the Executive Branch, codified at 5 CFR part 2635, and any agency supplemental regulation thereto; and how to contact agency ethics officials when the employee needs advice concerning ethics issues. As a minimum, each agency program shall consist of the initial ethics orientation required by § 2638.703 of this subpart and the annual ethics briefing required by § 2638.704 of this subpart. For purposes of this subpart, the term "employee" shall include special Government employees (as defined in 18 U.S.C. 202(a)) and officers of the uniformed services.

§ 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics.

(a) Direct the agency ethics training program to ensure that it meets the requirements of E.O. 12674 (as modified by E.O. 12731) and of this subpart and that the course content is legally correct.

(b) Ensure the availability of qualified individuals to meet the annual ethics briefing requirements of § 2638.704 of this subpart. For the purposes of this subpart, the following shall be considered qualified individuals:

- (1) The designated agency ethics official described in § 2638.201;
- (2) The alternate agency ethics official described in § 2638.202(b);
- (3) A deputy ethics official described in § 2638.204;
- (4) Any employee of the Office of Government Ethics whose services are made available by the Office of Government Ethics; and
- (5) An individual determined by the designated agency ethics official or his or her designee to possess sufficient familiarity with the conflict of interest statutes and standards of ethical conduct regulations applicable to agency employees to respond to routine questions raised during briefing; and

(c) Develop each year a written plan for annual ethics training to be conducted by the agency. The written plan for annual ethics training shall be completed by the beginning of the calendar year covered by the plan. In developing their written plans for annual ethics training, agencies shall coordinate with OGE where necessary. The plan shall contain a brief narrative description of the agency's annual ethics training, and shall also include:

(1) An estimate of the total number of agency employees who will be provided annual ethics briefings, including:

(i) An estimate of the number of public filers described in § 2638.704(b)(3) of this subpart who must be provided annual ethics briefings, including:

(A) An estimate of the number of public filers to whom annual ethics briefings will be presented verbally with a qualified individual present in accordance with § 2638.704(d)(2)(ii) of this subpart;

- (B) An estimate of the number of public filers to whom annual ethics briefings will be presented under the exception provided at § 2638.704(d)(2)(iii)(A) of this subpart; and
- (C) An estimate of the number of special Government employees who are public filers to whom the annual ethics briefing will be presented in accordance with the exception provided at § 2638.704(d)(2)(iii)(B) of this subpart; and
- (ii) An estimate of the number of covered employees other than public filers described in § 2638.704(b)(3) of this subpart who must be provided annual ethics briefings, including:
 - (A) An estimate of the number of covered employees who will receive a verbal annual ethics briefing in accordance with § 2638.704(d)(3)(ii) of this subpart;
 - (B) An estimate of the number of covered employees who will receive a written ethics briefing in accordance with § 2638.704(d)(3)(i) of this subpart;
 - (C) An estimate of the number of covered employees who will receive a written ethics briefing in accordance with the exception provided at § 2638.704(d)(3)(iii)(A) of this subpart;
 - (D) An estimate of the number of special Government employees and the number of officers in the uniformed services who will receive a written ethics briefing in accordance with the exceptions provided at § 2638.704(d)(3)(iii)(B) and (d)(3)(iii)(C) of this subpart; and
 - (E) An estimate of the number of covered employees who will receive a written ethics briefing in accordance with the exception provided at § 2638.704(d)(3)(iii)(D) of this subpart; and
- (2) Any other information that the designated agency ethics official believes will facilitate OGE's review of the agency's ethics training program.

§ 2638.703 Initial agency ethics orientation.

- (a) Each new agency employee who enters on duty shall, within 90 days of the date of his or her entrance on duty, be given:
 - (1) Except as provided in paragraph (b) of this section, a copy of part 2635 of this chapter, Standards of Ethical Conduct for Employees of the Executive Branch, and any supplemental regulation of the concerned agency;
 - (2) The names, titles, office addresses, and telephone numbers of the Designated Agency Ethics Official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and
 - (3) A minimum of one hour of official duty time for the purpose of permitting the employee to review the written materials furnished pursuant to this section. If the agency provides verbal ethics training during official duty time, including a verbal ethics briefing provided in accordance with § 2638.704(d) of this subpart, or a nominee or other new entrant receives verbal ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in such training.
- (b) An agency may meet the requirement of paragraph (a)(1) of this section by:
 - (1) Furnishing each employee a copy of the Standards of Ethical Conduct for Employees of the Executive Branch at part 2635 of this chapter, and any supplemental regulation of the concerned agency, for the purposes of review

only, provided that copies of the complete text of part 2635 and any supplemental regulation of the concerned agency are retained and readily accessible in the employee's immediate office for use by several employees; or

- (2) Providing each employee with materials that summarize part I of Executive Order 12674, as modified by Executive Order 12731, 3 CFR, 1990 Comp., p. 306, the Standards of Ethical Conduct for Employees of the Executive Branch at part 2635 of this chapter, and any supplemental regulation of the concerned agency. To ensure that all employees have access to all of the information contained in these documents, an agency using this alternative must ensure that copies of the complete text of part 2635 and the agency's supplemental regulation thereto (if any) are retained and readily accessible in the employees' immediate office area.

§ 2638.704 Annual ethics briefings.

- (a) *Annual ethics briefings.* Executive branch agencies must provide each employee identified in paragraph (b) of this section with an ethics briefing every calendar year. This briefing must meet the content requirements contained in paragraph (c) of this section and the presentation requirements contained in paragraph (d) of this section.
- (b) *Employees covered.* Executive branch agency employees to whom this section applies include all the following:
 - (1) Employees appointed by the President;
 - (2) Employees employed within the Executive Office of the President;
 - (3) Employees required to file public financial disclosure reports under part 2634 of this chapter;
 - (4) Employees required to file confidential (nonpublic) financial disclosure reports under subpart I of part 2634 of this chapter or any supplemental regulation or addendum of the concerned agency (agency employees who are excluded from the confidential financial disclosure requirements through the use of an alternative procedure approved by the Office of Government Ethics pursuant to § 2634.905(c) of this chapter must also receive annual ethics briefings from their agency pursuant to this paragraph);
 - (5) Contracting officers within the meaning of 41 U.S.C. 423 (f)(5); and
 - (6) Other agency employees designated by the head of the agency or his or her designee based on a determination that such briefings are desirable in view of their particular official duties.
- (c) *Content.* Agencies are encouraged to vary the emphasis and content of annual agency ethics briefings from year to year as necessary within the context of their ethics programs. The emphasis and content are generally a matter of each agency's sole discretion. However, each briefing must include, as a minimum:
 - (1) A reminder of the employees' responsibilities under part I of Executive Order 12674, as modified, the Standards of Ethical Conduct for Employees of the Executive Branch, part 2635 of this chapter, and any supplemental regulation thereto by the concerned agency;
 - (2) A reminder of the employees' responsibilities under the conflict of interest statutes contained in 18 U.S.C. chapter 11; and
 - (3) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employees' ethical responsibilities.
- (d) *Presentation.* The annual ethics briefing shall be presented in accordance with the following requirements:
 - (1) A qualified individual, as defined in § 2638.702(b) of this subpart, shall:
 - (i) Present the briefing, if the briefing is presented in person;

- * (ii) Prepare the recorded materials or presentation, if the briefing is presented by telecommunications, computer-based methods or recorded means; or *
- (iii) Prepare the written ethics briefing, if the annual ethics briefing requirement is satisfied through the use of a written ethics briefing in accordance with paragraphs (d)(2)(iii)(A)(2), (d)(2)(iii)(B), (d)(3)(i) or (d)(3)(iii) of this section.

(2) *Annual briefings for filers of public financial disclosure reports.*

- (i) The annual ethics briefings for covered employees described at paragraph (b)(3) of this section shall be verbal, either in person or by telecommunications, computer-based methods or recorded means. Employees must be provided a minimum of one hour of official duty time for this briefing.
- (ii) A qualified individual, as defined in § 2638.702(b) of this subpart, shall be present during and immediately following the presentation. The qualified individual need not be physically present at the training site to meet this requirement. To meet the "presence" requirement, the covered employees receiving the briefing must have direct and immediate access to the qualified individual.

Example 1 to paragraph (d)(2)(ii): An agency provides annual ethics briefings for public filers in a regional office by establishing a video conference link between a qualified individual in the headquarters office and the regional office. Because the link provides for direct and immediate communication between the qualified individual and the employees receiving the briefing, this arrangement meets the presence requirement even though the qualified individual is not physically located in the room where the briefing is received.

Example 2 to paragraph (d)(2)(ii): The agency described in the preceding example provides a briefing through a videotaped briefing instead of through a video conference link. The employees viewing the videotape are provided with a telephone at the training site and the telephone number of a qualified individual who is standing by during and immediately following the training to answer any questions. The briefing fulfills the physical presence requirement because the employees receiving the briefing have direct and immediate access to a qualified individual.

Example 3 to paragraph (d)(2)(ii): The physical presence requirement would not be met if the facts of Example 2 were varied so that the employees receiving the briefing did not have immediate access to the qualified individual, either because there was no phone provided at the training site or because the qualified individual was not standing by to respond to any questions raised. Merely providing the phone number of the qualified individual, without providing access to that individual who is standing by to answer questions raised during the briefing, does not provide the employees receiving the training with the direct and immediate access to the qualified individual necessary to satisfy the presence requirement.

- * (iii) *Exceptions.* An agency may provide the annual ethics briefing for employees described in paragraph (b)(3) of this section by means other than as specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section only under the following circumstances: *

- (A) Where the Designated Agency Ethics Official, or his or her designee, has made a written determination that circumstances make it impractical to provide the annual verbal ethics briefing with a qualified individual present, to a particular employee or group of employees in accordance with paragraphs (d)(2)(i) and (d)(2)(ii) of this section. In such cases, the annual ethics briefing may be provided without the presence of a qualified individual, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review the written materials, either by:

- (1) Telecommunications, computer-based methods or recorded means; or
- (2) Written means.

Example 1 to paragraph (d) (2) (iii) (A): The State Department has one public filer (the Ambassador) in the American Embassy in Ulan Bator, Mongolia. Because of the difference in time zones and the uncertainty of an ambassador's schedule, the designated agency ethics official for the State Department is justified in making a written determination that circumstances make it impractical to provide the annual ethics training as a verbal briefing, either with or without the presence of a qualified individual. The required annual ethics briefing can therefore be provided by written means in accordance with § 2638.704(d) (2) (iii) (A) (2). Note that an initial ethics orientation provided in the same calendar year in accordance with § 2638.703 of this subpart will meet this annual written ethics briefing requirement, provided the materials meet the content requirements stated at paragraph (c) of this section.

- (B) In the case of special Government employees who are covered employees under paragraph (b) (3) of this section, an agency may (without the presence of a qualified individual) provide the annual ethics briefing by written or other means at the agency's discretion, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review the written materials.

(3) *Annual ethics briefings for all other covered employees.*

- (i) An agency may satisfy the annual ethics briefing requirement for covered employees other than those described at paragraph (b) (3) of this section for up to two out of every three calendar years through the distribution of a written ethics briefing to those employees. In such case, while not required to provide a minimum of one hour of official duty time, an agency must provide employees receiving their annual ethics briefings under this paragraph with sufficient official duty time to review the written materials provided. Note that an initial ethics orientation provided in the same calendar year in accordance with § 2638.703 of this subpart will meet this annual ethics briefing requirement (as well as that of § 2638.704(d) (3) (iii) of this section), provided the materials meet the content requirements stated at paragraph (c) of this section.
- (ii) Except as permitted under paragraph (d) (3) (iii) of this section, the ethics briefing for covered employees other than those described at paragraph (b) (3) of this section shall be presented verbally at least once every three years, either in person or by telecommunications, computer-based methods or recorded means. Employees must be provided a minimum of one hour of official duty time for this verbal briefing. Unlike the annual ethics briefing described at paragraph (d) (2) of this section, for covered employees described at paragraph (b) (3) of this section, a qualified individual need not be present during and immediately following the verbal presentation provided under this paragraph.
- (iii) *Exceptions.* An agency can provide covered employees receiving their annual ethics briefings under this paragraph (d) (3) with written briefings only, in accordance with paragraph (d) (3) (i) of this section, every year without the verbal ethics briefing as described at paragraph (d) (3) (ii) of this section at least once in any three calendar year period, under the following circumstances:
- (A) Where the Designated Agency Ethics Official, or his or her designee, has made a written determination that circumstances make it impractical to provide an ethics briefing verbally once every three calendar years to a particular employee or group of employees in accordance with paragraph (d) (3) (ii) of this section;
- (B) In the case of special Government employees who are expected to work fewer than 60 days in a calendar year;
- (C) In the case of officers in the uniformed services who serve on active duty for 30 or fewer consecutive days; or
- (D) Where a particular employee or group of employees are covered employees solely because of agency discretionary designation pursuant to paragraph (b) (6) of this section.

* EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS...,5 CFR 2638, Subpart G *

SECTION 2. DoD GUIDANCE

11-200. Initial and Annual Ethics Training

a. Overall responsibility for the ethics training programs rests with the Head of each DoD Component acting through his or her DAEO. The Head of the DoD Component shall ensure that adequate resources are available to implement the requirements of this Chapter.

b. The DoD Component Heads and the DoD Component DAEOs, and their designees, have the authority under 5 CFR 2638.704(b)(6) (reference (a)) in subsection 11-100., above, to require that DoD employees, besides the ones covered by reference (a), receive annual ethics training.

SECTION 3. PROCEDURES

11-300. Initial Ethics Orientation (IEO) for New DoD Employees

a. Within 90 days of entering on duty, all new DoD employees who did not previously receive ethics training shall receive an IEO.

b. Notwithstanding the definition of DoD employee at subsection 1-211.c., above, the following requirement shall apply to active duty enlisted members. The DAEOs of the Military Departments, or designees, shall ensure that new active duty enlisted members of the Armed Services shall receive, within 180 days of entering on active duty, initial ethics training that is substantially equivalent to an IEO.

c. The term "immediate office," as used in section 2638.703 of reference (a), in subsection 11-100., above, shall include the local Ethics Counselor's office.

d. An IEO shall be a minimum of 1 hour of official duty time. The amount of official duty time given to new employees to review written materials required by the IEO may be reduced by the amount of time they spend receiving verbal ethics training during official duty time, including the annual ethics briefings for SF 278 filers (section 2638.704(d)(2)(i) of reference (a)), for SF 278 filers without the presence of a qualified individual by telecommunications, computer-based methods, or recorded means (section 2638.704(d)(2)(iii)(A)(1) of reference (a)), or for other covered employees (section 2638.704(d)(3)(ii) of reference (a)), in the same calendar year or within 90 days of entrance on duty.

e. An IEO that satisfies the requirements for an annual ethics briefing (section 2638.704(c) of reference (a), in subsection 11-100., above) may also be used to meet the employee's requirements to receive a written annual ethics briefing for the same calendar year. Written annual ethics briefings include the exceptions to verbal briefings for SF 278 filers (subsections 2638.704(d)(2)(iii)(A)(2) and 2638.704(d)(2)(iii)(B) of reference (a)), and written briefings and exceptions for other covered filers (subsections 2638.704(d)(3)(i) and 2638.704(d)(3)(iii) of reference (a)).

f. Each DoD Component is encouraged to supplement the minimum requirements of the IEO, including but not limited to, verbal briefings, in person or by telecommunications, computer-based methods, or recorded means.

g. Each DoD Component shall maintain records to track that the requirements of section 2638 of reference (a) in subsection 11-100., above, including the method of training provided to covered employees, have been met.

11-301. Annual Ethics Briefing (AEB)

a. The minimum requirements for an AEB for DoD employees who file SF 278s are established by subsections 2638.704(c), 2638.704(d)(1), and 2638.704(d)(2) of reference (a) in subsection 11-100., above. The following exceptions may apply:

(1) The DoD Component DAEO, or designee, may make a written determination that it is impractical to provide an AEB with a qualified individual present, under section 2638.704(d)(2)(iii)(A) of reference (a) in subsection 11-100., above. An IEO described in subsection 11-300.f., above, may satisfy the requirement for this exception for the same calendar year in which given.

(2) At the DoD Component DAEO's, or designee's, discretion, special Government employees, including military flag or general officers, serving more than 60 days in the calendar year, may be briefed in accordance with the exception at section 2638.704(d)(2)(iii)(B) of reference (a) in subsection 11-100., above. An IEO described in subsection 11-300.f., above, may satisfy the requirement for this exception for the same calendar year in which given.

b. The minimum requirements for an AEB for DoD employees who file OGE Form 450s (section 2638.704(b)(4) of reference (a)), who are contracting officers (section 2638.704(b)(5) of reference (a)), and who are designated (section 2639.704(b)(6) of reference (a)) (other covered employees) are established by subsections 2638.704(c), 2638.704(d)(1), and 2638.704(d)(3) of reference (a) in subsection 11-100., above. DoD Components may require ethics training in addition to the minimum requirements for all or any part of their covered and non-covered employees pursuant to their own requirements for ethics training.

(1) Each DoD Component is encouraged to provide 1 hour of official duty time to review a written AEB and to supplement the written AEB, including but not limited to, verbal briefings, in person or by telecommunications, computer-based methods, or recorded means, and ethics related articles in command communications, newsletters, and ethics electronic bulletin board systems.

(2) An IEO described in subsection 11-300.f., above, may satisfy the requirement for a written AEB for the same calendar year in which given.

(3) For DoD Components that verbally brief all of their other covered employees during 1 year of a consecutive 3-year period, 1997 shall be the first year of such briefings. Thereafter, verbal briefings shall follow in 3-year increments; e.g., 2000, 2003, 2006; etc.

(4) The following exceptions to verbal AEBs may apply:

(a) The DoD Component DAEO, or designee, may make a written determination that it is impractical to provide a verbal AEB once every 3 calendar years, under section 2638.704(d)(3)(iii)(A) of reference (a) in subsection 11-100., above. An IEO described in subsection 11-300.f., above, may satisfy the requirement for this exception for the same calendar year in which given.

(b) DoD employees who are special Government employees, who are officers in the uniformed services who serve on active duty for 30 or fewer consecutive days, or who are designated employees (subsections 2638.704(d)(3)(iii)(B), 2638.704(d)(3)(iii)(C), and 2638.704(d)(3)(iii)(D) of reference (a)), in subsection 11-100., above, may be given written AEBs, in accordance with section 2638.704(d)(3)(i) of reference (a). An IEO described in subsection 11-300.f., above, may satisfy the requirement for this exception for the same calendar year in which given.

c. Each DoD Component shall maintain records to track that the requirements of section 2638 of reference (a) in subsection 11-100., above, including the method of training provided to covered employees, have been met.

11-302. Annual Ethics Training Plans. Each DoD Agency (see definition of "Agency" in subsection 1-201., above) shall develop a written plan for annual ethics training for a calendar year by the beginning of that year, in compliance with section 2638.702(c) of reference (a) in subsection 11-100., above. The DoD Components that are not Agencies shall submit annual ethics training plans to DoD SOCO by December 31st of the prior year for approval and inclusion in SOCO's ethics training plan.

11-303. Ethics Training Assistance. Ethics training materials may include, but are not limited to, training videos, satellite broadcasts of training and videos of the broadcasts, modular training packages with copies of overhead slides, facilitator scripts, discussion hypotheticals, handout material, texts, correspondence courses, and computer games. The DoD SOCO and the DoD Components shall distribute ethics training materials to other DoD entities, as warranted.

SECTION 4. RESPONSIBILITIES

The responsibilities of the Heads of the DoD Components, the DoD Component DAEOs, the Heads of DoD Component commands or organizations, the Directors of the DoD Component personnel offices, the administrative officers (or equivalents) of DoD Component commands and organizations, the DoD SOCO, and the DoD employees are established at section 1-400. et seq., above.

SECTION 5. REFERENCES

11-500. References

- (a) Title 5, Code of Federal Regulations, Part 2638, "Executive Agency Ethics Training Programs," current edition
- (b) Executive Order 12674, "Principles of Ethical Conduct for Government Officers and Employees," April 12, 1989
- (c) Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," current edition

* SECTION 7. CONFIDENTIAL CERTIFICATE OF NO NEW INTERESTS

* C-700. OGE Optional Form 450-A

OGE OPTIONAL FORM 450-A
U.S. OFFICE OF GOVERN-
MENT ETHICS (4/97)

SEE PRIVACY ACT AND PENALTIES
STATEMENTS ON REVERSE SIDE
(OR ON ATTACHED PAGE)

CONFIDENTIAL CERTIFICATE OF NO NEW INTERESTS (EXECUTIVE BRANCH)
IN LIEU OF ANNUAL OGE FORM 450

This optional form is to be used only by current employees of the executive branch (other than special Government employees), in accordance with 5 CFR 2634.905(d). If you have a previous OGE Form 450 on file with your agency and can certify to all of the following statements, your agency may permit you to use this OGE Optional Form 450-A instead of filing an annual OGE Form 450. If you cannot certify to all of the following statements or otherwise do not wish to use this OGE Optional Form 450-A, you must complete a new OGE Form 450 as your annual report. Consult your agency ethics office for more information.

After examining a copy of my last confidential financial disclosure report (OGE Form 450), I certify to the following:

A. NO NEW INTERESTS. Since filing my last OGE Form 450:

1. I have no new reportable assets or sources of income, for myself, my spouse, or my dependent children;
2. Neither my spouse nor I have new reportable sources of income from non-Federal employment;
3. I have no new reportable liabilities (debts), for myself, my spouse, or my dependent children;
4. I have no new reportable outside positions for myself;
5. I have no new reportable agreements or arrangements concerning future, current, or past non-Government employment for myself;
6. I have no new reportable gifts or travel reimbursements for myself, my spouse, or my dependent children.

(For a description of what interests are reportable, see OGE Form 450 and its accompanying instructions, and/or other agency guidance.)

B. NO CHANGE IN POSITION/DUTIES. Since filing my last OGE Form 450, I have not changed jobs at my agency. (The term "changed jobs" includes a new position description or other significant change in duties.)

I certify that the above statements are true, complete, and correct, to the best of my knowledge.

Signature of Employee _____ Date _____

Printed Name _____ Work Phone _____

Position/Title _____ Agency/Unit _____

FOR AGENCY USE

Date received:

Notes:

Reporting Individual's Certification. The signature of reporting individual is a certificate that the interests represented in the attached report are not in conflict with that individual's official duties.

**FILERS MUST ATTACH A COPY OF THEIR
MOST CURRENT OGE FORM 450 WITH THE
FORM.**

Supervisor's Certification. I have reviewed the interests reported on this form in light of the duties required by the reporting individual's position. I am satisfied that there is no actual or potential conflict of interest. (If remedial action is required or additional explanation is necessary, use reverse side.)

Supervisor's signature: _____
(Check box if comments are continued on reverse side) ☐

OGE OPTIONAL FORM 450-A
U.S. OFFICE OF GOVERN-
MENT ETHICS (4/97)

PRIVACY ACT STATEMENT

Pursuant to Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.) and Executive Order 12674, the Office of Government Ethics regulations at 5 CFR Part 2634, Subpart I, permit the completion of this Certificate of No New Interests in lieu of an annual OGE Form 450, in appropriate cases.

The primary use of this form is for review by Government officials at your agency, to determine compliance with applicable Federal conflict of interest laws and regulations. Additional disclosures of this certificate may be made: (1) to a Federal, State, or local law enforcement agency, if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (2) to a court or party in a court or Federal administrative proceeding, if the Government is a party or in order to comply with a judge-issued subpoena; (3) to a source, when necessary to obtain information relevant to a conflict of interest investigation or decision; (4) to the National Archives and Records Administration or the General Services Administration, in records management inspections; (5) to the Office of Management and Budget during legislative coordination on private relief legislation; and (6) in response to a request for discovery or for the appearance of a witness in a judicial or administrative proceeding, if the information is relevant to the subject matter.

This Certificate of No New Interests is confidential. No member of the public shall have access to it, except as authorized by law.

PENALTIES

Falsification of this certificate may subject you to disciplinary action by your employing agency or other authority. Knowing and willful falsification of the certificate may also subject you to criminal prosecution.